

Flood Control and Navigation take precedence

HIGBEE, Mo. - The U.S. Court of Appeals for the Eighth Circuit released a court ruling today affirming the priorities of the Flood Control Act of 1944.

The court stated, "The dominant

functions of the Flood Control Act were to avoid flooding and to maintain downstream navigation" and recognized that "recreation and other interests [are] secondary uses" on the river.

The court indicated the Master Manual, the guidance document for Missouri River operations, established competing use priority with recreation, fish and wildlife

following flood control, irrigation, water supply and water quality requirements, navigation and power.

They quoted Flood Control Act language that notably reads, "insofar as possible without serious interference with the foregoing functions (emphasis added), the reservoirs will be operated for maximum benefit to recreation, fish and wildlife."

"Finally, it's been legally reaffirmed that the Flood Control Act means what it says," stated Randy Asbury, executive director of the Coalition to Protect the Missouri River. "Stakeholders have argued for years navigation was being assailed to the benefit of recreation interests. Upper Basin states attempted to kill the navigation industry though its existence on the Missouri River was congressionally authorized. Though we empathize with recreation interests during this time of drought, the dams were constructed with navigation as a priority use and dry conditions don't change that fact."

The Eighth Circuit ruling was precipitated by a suit filed by the State of South Dakota in April '02 against the U.S. Army Corps of Engineers

(Corps) to prevent the Corps from releasing water from Upper Basin reservoirs.

South Dakota biologists and state officials cited lower reservoir levels would have negative impacts on their rainbow smelt hatch. Rainbow smelt are food fish for the walleye, South Dakota's signature sport fish.

South Dakota argued "the Flood Control Act requires the Corps to maximize the benefits of the River, including fish-and-wildlife benefits."

The court responded, "Courts are simply not empowered to review every decision of the Corps to ensure that it maximizes the benefits of the River for all interests. Indeed, such a standard would be impossible to meet, anyway. In times of drought, it is not possible for navigation and fishery benefits to be maximized. Something has to give."

South Dakota's filing escalated into suits being filed against the Corps by the States of North Dakota, Montana and Nebraska with Missouri and stakeholder groups, lead by the Mo-Ark Association and Missouri and Mississippi River entities, intervening at the appellate level to protect their interests.

Contradictory federal judge rulings on these suits pushed the battle to the Eighth Circuit on appeal.

A second portion of the ruling established the Master Manual is a rule thus eliminating the Corps argument that their actions were not subject to judicial review.

Though the Corps has been given a "good deal of discretion" by the Flood Control Act, the three-judge panel stated that "this discretion is not unconstrained."

The courts recognition that the Master Manual is a rule should circumvent many of the past year's Missouri River Basin litigation events from becoming perpetual occurrences.

The Coalition to Protect the Missouri River (CPR) represents the diverse interests of agricultural, navigational, industrial, utility and business-related entities. CPR supports responsible management of Missouri River resources and the maintenance of congressionally authorized purposes of the river including flood control and navigation. CPR also supports habitat restoration for endangered or threatened species.